IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8621 OF 2006

Shri Dashrath Sadashiv Chavan, aged 52 years, Occupation Service as Senior Clerk, residing at unner, Kalyan Peth, Tal. Junner, District Pune, at presently Post Joshi Sambhaji Nagar, Near Anganwadi, Jath, Dist. Sangli. ... Petitioner

Versus

1. The State of Maharashtra through the Secretary, Animal Husbandry, 5th Floor, Mantralaya, Mumbai – 400 032.
2. The Commissioner, Department fo Animal Husbandry, Maharashtra State, Central Building, Pune. ... Respondents

Mr. R.K. Mendadkar for the petitioner.

Mr. V.P. Malvankar, A.G.P. for respondents 1 and 2.

CORAM : SMT. RANJANA DESAI &
SMT. ROSHAN DALVI, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 21ST NOVEMBER, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 19TH DECEMBER, 2007.

JUDGMENT : (Per Smt. Ranjana Desai, J.)

1. The petitioner has challenged in this petition order dated 12/1/2006 passed in Original Application No.527 of 2005 and order dated 29/9/2006 passed in Review Application No.8 of 2006 dismissing the review application filed by the petitioner, by the Maharashtra Administrative Tribunal, Bombay Bench, (for short, "the Tribunal").

2. The petitioner had joined the Government service as Enumerator. He worked as Enumerator from 2/11/1977 to 1983 at Pune. During 1983 to 1993, he was working as Junior Clerk at Pune. He was then transferred to Ahmednagar on the same post from 1993 to 1998. He was suspended from the services in August, 1998. He was, inter alia, charged that while working at Jath, Dist. Sangli, from 11/7/1998, he fabricated the signatures of the Head of the Department on the leave applications of the employees and submitted the bills to the Accounts Department, Jath and misappropriated an amount of Rs.40,747/- and, thus, he has cheated the Government. The total amount misappropriated

by him from 1993 to 1998 was stated to be Rs.6,01,169/-. He was dismissed from service after submission of report by the inquiry officer after a full fledged departmental inquiry.

3. The petitioner challenged this order of dismissal dated 27/5/2005 in the Tribunal. One of the grounds of challenge was that subsistence allowance for two years i.e. 1998-2000 was not paid to him. The Tribunal recorded the fact that the petitioner had accepted in the court that he had, in fact, received subsistence allowance but still some amounts were outstanding. The Tribunal perused the record and recorded a finding that the grievance of the petitioner about the subsistence allowance has been redressed and expressed hope that if there is any balance that would be paid. The second ground of challenge was that Dr. Ramteke was not the competent authority to pass the order of dismissal. According to the petitioner, as the order of dismissal is passed by the authority, who is not the appointing authority, it will have to be set aside. The Tribunal observed that the impugned order of dismissal is passed by the Commissioner, Animal Husbandry, who was working, as such, at the material time and hence there is no substance in this contention.

4. The third challenge raised by the petitioner was that he was tried in the court of Judicial Magistrate, First Class and convicted for the same charges; he had challenged conviction and sentence in the Sessions Court; the said appeal was pending before the Sessions Court and the learned Sessions Judge had suspended the sentence. Therefore, the order of dismissal should not have been passed. The Tribunal observed that it was not necessary for the department to wait till the conclusion of the criminal case. So far as the argument that punishment imposed was disproportionate is concerned, the Tribunal observed that the punishment was imposed on the ground of proved misconduct. The inquiry was conducted after following proper procedure. Serious charges of misappropriation of huge amounts were levelled against the petitioner and, therefore, relying on the judgment of the Supreme Court in ***LIC v. R. Dandapani, AIR SCW 2005 6271***, the Tribunal concluded that the fact that the petitioner had put in 28 years of service is no ground for reduction of punishment and the punishment imposed was perfectly justified. The Tribunal thus dismissed the original application.

5. The petitioner filed a review application being Review Application No.8 of 2006. In the review application, the petitioner contended that Dr. V.G. Ramtake, who was then working as Commissioner, Animal Husbandry, was not posted as such Commissioner. In fact, he was not working as Commissioner on 27/5/2005 when the order in question was served upon the petitioner. He was working as Joint Director, Institute of Veterinary Biological Product, Oundh, Pune and, hence, he could not have passed the order of dismissal. The Tribunal observed that the discretion of the Tribunal to interfere with the order passed in its revisional jurisdiction is extremely limited. The Tribunal can revise its order only when there is an apparent error on the face of record. It can interfere if it is brought to its notice that certain other material piece of evidence which was not then available despite due diligence, is placed on record. The Tribunal observed that at the relevant time, Dr. Ramtake was posted as Additional Commissioner in Pune. If he was working as Commissioner or Joint Commissioner in the Department of Animal Husbandry, that will not alter the position. In the circumstances, the Tribunal refused to interfere with its earlier order. As sated hereinabove,

the petitioner has challenged the order dated 12/1/2006 passed in Original Application No.527 of 2005 and order dated 29/9/2006 dismissing the review application.

6. We have heard, learned counsel appearing for the petitioner. He has reiterated that Dr. Ramteke was not given any kind of charge during the absence of Mr. Bijay Kumar, who was holding the charge and was working as Commissioner, Animal Husbandry at the relevant time and, therefore, the Tribunal erred in dismissing the original application as well as the review application.

7. Affidavit in reply is filed by S.B. Pardeshi, Senior Administrative Officer, Office of the Regional Joint Commissioner of Animal Husbandry, Mumbai Region, Mumbai. In the affidavit, it is stated that Dr. V.G. Ramteke, Joint Commissioner of Animal Husbandry was holding the additional charge of Additional Commissioner of Animal Husbandry during the period from 9/5/2005 to 31/5/2005. In this period Mr. Bijay Kumar (I.A.S.), Commissioner, Animal Husbandry was on leave. Hence, the Government had issued a directive that the additional charge of the post of Commissioner of Animal Husbandry be handed over to the

Additional Commissioner of Animal Husbandry during the period from 9/5/2005 to 31/5/2005. As the Additional Commissioner was asked to take additional charge of the post of the Commissioner Animal Husbandry by the Government, he was expected to perform the duties of the post of Commissioner of Animal Husbandry. To the affidavit, the relevant Government circulars and memorandum are annexed.

8. In view of this affidavit and the annexures to the affidavit, which we have carefully perused, we are of the opinion that no interference is necessary with the impugned orders passed by the Tribunal. There is no substance in the petition. The petition is rejected.

[SMT. RANJANA DESAI, J.]

[SMT. ROSHAN DALVI, J.]